

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 629 of 2000

Decided on : November 6, 2006

Arun Kumar Sood

.....Petitioner.

VERSUS

State of H.P. & others

.....Respondents.

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The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Petitioner : Mr. Bhupender Gupta, Senior Advocate, with Mr. Janesh Gupta, Advocate.

For the Respondents : Mr. Ashok Chaudhary, Additional Advocate General, for respondent No.1.

Mr. Ajay Goel, Advocate, for respondent No.2.

Mr. Ajay Sharma, Advocate, for respondent No.3.

Surjit Singh, Judge (Oral)

This writ petition has been filed seeking issuance of the following writ, orders or directions:

1. Quashing or setting aside the order/action of Respondent No.3 in granting lease in favour of the respondent No.3.
2. Directing the respondents to produce the entire record.

Whether the reporters of the local papers may be allowed to see the Judgment?

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3. Directing Respondent No.2 to restrain Respondent No.3 to raise any sort of construction at the site for which the lease has been granted in favour of the respondent No.3 till the disposal of the writ Petition.
4. Directing the Respondent No.2 to consider the request of the Petitioner for construction of free homeopathic dispensary to be dedicated to the general public.

2. Respondent No.2 Municipal Corporation is the owner of land abutting on the Cart Road, on the valley side, opposite the Rivoli Bus Stand. The petitioner approached respondent No.2 for permission to raise a rain shelter on a part of the aforesaid land in the memory of his parents. Permission was granted to him. The petitioner erected pillars from a level lower than the road level and on those pillars he laid beams and on the beams a slab was laid. On that slab he raised a superstructure for the rain shelter, the slab serving as the floor of that rain shelter. Case of the petitioner is that after the rain shelter had been constructed, he again approached respondent No.2 to allow him to construct a structure below the floor of the rain shelter, supported by the pillars already erected at the lower level, for the purpose of a homeopathic dispensary for general public, but respondent No.2 rejected his prayer and instead allotted

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the site below the floor of the rain shelter to respondent No.3 for setting up a printing press by converting that site into a structure.

3. The grievance of the petitioner is two-fold. Firstly, the site should have been allotted, as per his request, for setting up a homeopathic dispensary for general public, he having spent money on the erection of the pillars and providing a slab on those pillars to serve as floor for the rain shelter. His second grievance is that the site could not have been allotted to respondent No.3 without inviting applications from the general public, by means of advertisement or some public notice and that the action of respondent No.2 in allotting the said site to respondent No.3 is illegal, contrary to the provisions of the Municipal Corporation Act and is violative of Article 14 of the Constitution of India, because respondent No.2, being a 'State', within the meaning of Article 12 of the Constitution of India, could not have granted the lease of the property, in question, arbitrarily in favour of respondent No.3.

4. Respondents No.2 and 3, in their separate written replies, have taken similar stand. According to them, respondent No.3 had been allotted a piece of land, measuring 64.44 Sq. yards area, by the Wakf Board in Ruldu Bhatta area for setting up a printing press, but a portion of that area, to the extent of 4 Sq.m. had been utilized by respondent No.2 for the construction of a public toilet and some more area had been utilized for providing access to that toilet and it was in lieu of the utilization of a portion of the area allotted to respondent No.3 by Wakf Board that the site, in question, which measures 116 Sq. feet only or about 13 Sq. Yards, had been allotted

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to him and that too on the condition that the estimated expenditure of Rs.84,000/- on the construction of the structure would be incurred by respondent No.3 himself and he would pay rent at the rate of Rs.10/- per Sq. foot per month or say total rent of Rs.1160/- per month.

5. I have heard the learned counsel for the parties and gone through the record.

6. Learned counsel for the petitioner urged that respondent No.2 can dispose of its property only in accordance with the provision of Section 157 of the Himachal Pradesh Municipal Corporation Act, 1994, hereinafter referred to as the Act, and that its action in allotting the site, in question, to respondent No.3 is not covered by the said provision.

7. Section 157 of the Act is reproduced for ready reference:

“157. With respect to the disposal of property belonging to the Corporation, the following provisions shall have effect, namely:----

- (a) the Commissioner may, with the prior approval of the Corporation,---
 - (i) dispose of, by sale or otherwise, any movable property belonging to the Corporation the value of which does not exceed one lakh rupees; or
 - (ii) grant a lease not exceeding a period of ten years, of any immovable property belonging to the Corporation; or
 - (iii) sell or grant a lease in perpetuity of any immovable property belonging to the Corporation the value of which does not exceed one lakh rupees or the annual rent of which does not exceed ten thousand rupees;
- (b) in cases not covered by clause (a) the Commissioner may, with the sanction of the Government on recommendation of the Corporation, lease, sell, let out on hire

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or otherwise transfer any property movable or immovable belonging to the Corporation;

- (c) the consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition;
- (d) the sanction of the Government under the aforesaid clauses may be given either generally for any class of cases or specially for any particular case;
- (e) subject to any condition or limitation that may be specified by or under any other provision of this Act, the foregoing provisions of this section shall apply to every disposal of property belonging to the Corporation made under, or for any purposes of this Act;
- (f) every case of disposal of property under clause (a) shall be reported by the Commissioner without delay to the Director; and
- (g) sell or grant a lease in respect of properties, amenities and utilities created on loans raised from non-governmental sources to liquidate liabilities.”

8. In the present case, it is on the basis of a Resolution, passed on Proposal No.3(3) submitted to the Municipal Corporation for its consideration in the meeting held on 25.11.1999, that lease in respect of the site, in question, has been granted in favour of respondent No.3. The copy of the Resolution is Annexure R-2/B. A formal letter of grant was written to respondent No.3, in accordance with the aforesaid Resolution, which is dated 5.5.2000. Its copy is Annexure R-2/C. A reading of the letter shows that lease deed has been executed in favour of respondent No.3 on 18.12.1999, thereby

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permitting him to convert the framed structure below the rain shelter into stall/shop by providing RCC slab and brick masonry. The permission has been granted subject to certain conditions mentioned in the letter. The lease deed itself has not been placed on record and, therefore, it cannot be said whether it is a lease in perpetuity within the meaning of sub-clause (iii) of Clause (a) of Section 157 of the Act or a lease not exceeding a period of ten years, under sub-clause (ii) of Clause (a) of Section 157 of the Act, or it is a lease under any of the other clause(s) of Section 157. In the absence of the lease deed, it cannot be said that the lease that has been created in favour of respondent No.3 is not in accordance with the provisions of Section 157 of the Act.

9. The abovestated position apart, this is not a case of creation of lease of the property of respondent No.2 in favour of respondent No.3 in ordinary circumstances so as to call for strict compliance of requirement of Section 157 of the Act or to invite applications for allotment from the general public by wide publicity through some advertisement or public notice. Respondent No.3 had obtained grant of a piece of land measuring 64.44 Sq. Yards or say 580 Sq. feet site from Wakf Board for setting up a printing press. Respondent No.2 utilized a portion of this land by constructing a public toilet. Respondent No.3 represented to the Municipal Corporation, i.e. respondent No.2, that the public toilet had been constructed in the middle of the aforesaid site, thereby rendering the utilization of the remaining area of the site impossible. He further stated that passage to the toilet had also been provided through the

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aforesaid site. These facts find mention in the proposal, copy Annexure R-2/B, which was submitted to the Municipal Corporation for consideration. It was in fact in lieu of the utilization of a portion of the site granted to respondent No.3 by the Wakf Board for setting up a printing press by him, due to which that site was rendered unfit for setting up a printing press, that respondent No.2 allotted the site, in question, which measures only 116 Sq. feet or say about 13 Sq. Yards, to respondent No.3. The site is to be developed into a structure by respondent No.3 at his own cost, which, as per aforesaid proposal, copy Annexure R-2/B, has been estimated at Rs.84,000/- and the Municipal Corporation would be charging rent at the rate of Rs.1160/- per month. In a way, this rent would be for the vacant site, because the structure is to be raised by respondent No.3 at his own cost.

10. Petitioner cannot claim a better right to the allotment of the site simply for the reason that the pillars were erected by him to support the rain shelter.

11. In view of the abovestated position, I find no merit in the Writ Petition. The same is, therefore, dismissed.

November 6, 2006(sd)

(Surjit Singh), J.